

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BRIAN T. STEWART,

Plaintiff,

v.

AL LUEBBERS,

Defendant.

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No. 4:01CV01011 RWS

MEMORANDUM AND ORDER

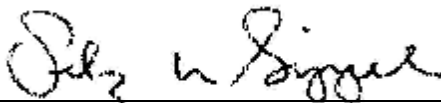
This matter is before me on Stewart's Motion for Issuance of Certificate of Appealability [#47]. Under Federal Rule of Appellate Procedure 4, I do not have the discretion to reopen the Certificate of Appealability in this case because this motion is untimely.

Petitioner was sentenced by the state court in 1998. Petitioner sought state and federal habeas relief after the conviction. I denied federal habeas relief on November 5, 2004. The United States Court of Appeals for the Eighth Circuit denied Stewart's application for a certificate of appealability on April 12, 2005. Stewart v. Luebbbers, No. 04-3989 (8th Cir. 2005).

Accordingly,

IT IS HEREBY ORDERED that Stewart's Motion for Issuance of Certificate of Appealability [#47] is **DENIED**.

Dated this 6th Day of August, 2007.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE